

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**PROPOSED PRELIMINARY INSTRUCTIONS
OF HATEM NAJI FARIZ**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, hereby respectfully submits his proposed preliminary instructions to be read to the jury at the beginning of the trial. Mr. Fariz's instructions are offered as a counter-proposal to the government's proposed preliminary instructions (Doc. 1144), including the government's summary of the superseding indictment (Doc. 1057).

I. Mr. Fariz's Proposed Preliminary Instructions

Mr. Fariz's proposed preliminary instructions are presented in Attachment A. In submitting his counter-proposal concerning the preliminary instructions, Mr. Fariz objects to the government's summary of the superseding indictment. First, the summary does not completely and accurately reflect the charges in the case. For example, the summary claims that Count One charges the defendants "with *conspiring to associate* themselves with an enterprise known as the Palestinian Islamic Jihad." (Doc. 1057 at 1) (emphasis added). The Superseding Indictment actually charges the Defendants with conspiring "to conduct and participate, directly and indirectly, in the conduct of the affairs of [the PIJ] enterprise,

through a pattern of racketeering activity. . . .” (Doc. 636 at 10). The summary also fails to specify the applicable dates of each of the charges and other pertinent details, including the essential elements of the charges, that would provide an actual overview of the charges to the jury.¹ The summary proposed by the government will fail to provide the jury with sufficient detail, at the beginning of what could be a six-month or longer trial, to guide them when they are hearing the evidence.

Second, the government proposes to tell the jury that while five of the defendants are not present at trial, that the jury “need not concern [themselves] with the absence of the other five defendants nor speculate as to the reason for their absence.” (Doc. 1057 at 1; Doc. 1144 at 4). The government cites no authority that supports their request for this instruction. Mr. Fariz objects to such an instruction, particularly since the jury should be able to draw its own conclusion, based on evidence presented in the trial, concerning the absence of the five co-defendants.

Mr. Fariz would propose two alternatives to the Court. First, Mr. Fariz would request that the Court read to the jury the entire Superseding Indictment.² Given the length of the trial and the complexity of the charges, the beginning of the trial is an apt time to inform the

¹ Mr. Fariz understands that the government previously represented to the Court that the government would have no objection to instructing the jury at the beginning of the trial of the applicable dates of the statutes at issue in this case. (Doc. 461, Tr. 1/21/04 Hearing, at 77-78).

² Mr. Fariz would request that the Court exclude the items that the Court has already ruled should not be admitted, including (1) references to the “Great Satan America”; and (2) Overt Act 301; and would additionally request that the Court read Count One, Section A, Paragraph 14 to say that “Defendant HATEM NAJI FARIZ *is*,” not “was,” a United States citizen. (Doc. 1106).

jury fully of what the charges are. The entire Superseding Indictment will allow the jury to hear the exact charges and the alleged overt acts against each of the Defendants.

Mr. Fariz's second counter-proposal is that the Court read to the jury the charging language for each Count. In particular, Mr. Fariz would alternatively request that the Court read the summary provided in the attached instructions for each Count.³

II. Requested Instructions During Trial

Mr. Fariz anticipates that certain instructions will be requested during trial, including but not limited to:

A. Translations

When a translation is admitted into evidence, Mr. Fariz would request an instruction similar to the pattern instruction provided in Trial Instruction 6, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003. Mr. Fariz's proposed instruction can be found in Attachment B.

B. Co-Conspirator Statements

Mr. Fariz renews his objection to the admission of alleged co-conspirator statements absent a prior showing that each of the requirements of Federal Rule of Evidence 801(d)(2)(E) and the Sixth Amendment's Confrontation Clause has been met. (Doc. 980).

Mr. Fariz would request the instruction in Attachment C for out-of-court statements that fail to meet these requirements with respect to Mr. Fariz.

³ Mr. Fariz has only proposed language for the Counts in which he is charged.

C. Experts

Mr. Fariz would request the Court instruct the jury as provided in Basic Jury 7, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003, for expert witnesses. This instruction is provided in Attachment D.

D. Judicial Notice

Mr. Fariz maintains his objection to the government's request that this Court take judicial notice of certain designations. (Doc. 1036). Federal Rule of Evidence 201(g) provides that "[i]n a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed." Should the Court instruct the jury that the Court has taken judicial notice of the applicable designations, Mr. Fariz would request such an instruction.

E. Other Instructions

Mr. Fariz reserves the right to submit additional instructions to address the evidence presented and issues raised during trial.

III. Verdict Form

Mr. Fariz would reserve the right to submit a proposed verdict form by the close of the trial so that it may accurately reflect the charges for the jury's deliberations.

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Public Defender